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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

WAINWRIGHT et al. v. BANKERS' LOAN & INVESTMENT CO.

Sept. 14, 1911.

[72 S. E. 129.]

1. Landlord and Tenant (§ 76*)—Leases—Assignment.—Where a lease recited that the premises were to be used for hotel, billiard room, and saloon, and the lessees agreed not to use the building for any other purpose or sublet the building or any portion for any other purpose without the consent of the lessor, it was assignable.

[Ed. Note.—For other cases, see Landlord and Tenant, Dec. Dig. § 76.* 1 Va.-W. Va. Enc. Dig. 753; 9 Va.-W. Va. Enc. Dig. 193.]

2. Appeal and Error (§ 1066*)—Harmless Error—Instructions.—Where a lessee's defense to an action for rent was that the lease had been terminated by notice given by the assignee of the lease, the refusal of an instruction that the lease was assignable was prejudicial error.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 1066.* 9 Va.-W. Va. Enc. Dig. 195.]

Error to Circuit Court of City of Roanoke.

Action by the Bankers' Loan & Investment Company against W. H. Wainwright and another. There was judgment for plaintiff, and defendants bring error. Reversed.

A. B. Hunt and *Woods & McNulty*, for plaintiff in error.

Hall, Woods & Jackson, for defendant in error.

NORTH BRITISH & MERCANTILE INS. CO. v. NIDIFFER.

Sept. 14, 1911.

[72 S. E. 130.]

1. Evidence (§ 269*)—Declarations of Third Persons.—In an action on a fire policy transferred to plaintiff, in which defendant claimed that the fire was caused by plaintiff or with his consent, evidence of declarations by the original insured, about a month before the fire, that there would shortly be a big fire, which would burn up the block, and of his inquiry as to who owned the nearby buildings, and whether they were insured, was not admissible as against plain-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

tiff, in absence of evidence connecting him with the declarations, though it appears that plaintiff owed declarant a balance on the price of the property purchased; declarant not being a party thereto.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 269.* 4 Va.-W. Va. Enc. Dig. 339.]

2. Insurance (§ 308*)—Fire Insurance—Compliance with Conditions.—An insured is only required to make a reasonable and substantial compliance with the conditions of a fire policy in order to sue thereon.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 700, 701; Dec. Dig. § 308.* 7 Va.-W. Va. Enc. Dig. 797; 6 Va.-W. Va. Enc. Dig. 73.]

3. Insurance (§ 669*)—Fire Insurance—Actions—Instructions—Amount Awarded.—An instruction, in an action on a fire policy, that if the jury believe that plaintiff should recover they should assess the value of the property “as of the time of the fire, and find for plaintiff three-fourths of the said value,” could not have misled the jury to fix any other value than the actual cash value of the property on the day of the fire, though it might have been well to have directly so instructed.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 669.* 6 Va.-W. Va. Enc. Dig. 95.]

4. Insurance (§ 552*)—Fire Insurance—Proof of Loss.—Misstatements in the proof of loss, or insured's examination under oath, would not prevent recovery on a fire policy, unless they were intentionally made.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 1358; Dec. Dig. § 552.* 6 Va.-W. Va. Enc. Dig. 103; 14 Va.-W. Va. Enc. Dig. 451.]

5. Insurance (§ 1064*)—Fire Insurance—Instructions—Proof of Loss—Effect of Misstatements.—In an action on a fire policy transferred to plaintiff by the original insured, there was evidence that plaintiff, in making his proof of loss and in his examination under oath, based his estimate of the value of the destroyed articles upon invoices shown him by the original insured when he purchased the goods, a month before the fire, and that some of the articles were excessively valued, and others shown in the proof did not exist, and the evidence made it a jury question whether plaintiff, in making proof of loss, had reason to and did believe that the invoices were correct. The court instructed that, if plaintiff in his proof of loss or examination adopted any statement of any one which was false, without attempting to know or investigate the truth of such matters, “and without any grounds for adopting said statement,” he became responsible therefor as false, requiring a finding for defendant.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Held, that, while it would have been better to have used the word "reasonable" before "grounds," it was not affirmative error to modify the instruction by inserting the quoted words; it not appearing that defendant was prejudiced thereby.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 4221-4224; Dec. Dig. § 1064.* 6 Va.-W. Va. Enc. Dig. 103; 14 Va.-W. Va. Enc. Dig. 451.]

Error to Circuit Court, Wise County.

Action by M. D. Nidiffer against the North British & Mercantile Insurance Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Bond & Bruce and Geo. W. St. Clair, for plaintiff in error.
W. S. Cox and Morton & Parker, for defendant in error.

HOWARD et al. *v.* HOWARD et al.

Sept. 14, 1911.

[72 S. E. 133.]

1. Evidence (§ 63*)—Presumption of Sanity.—All men are presumed of sound mind; the burden being upon one asserting it to show the contrary.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 83; Dec. Dig. § 63.* 7 Va.-W. Va. Enc. Dig. 680.]

2. Deeds (§ 72*)—Undue Influence.—The undue influence sufficient to set aside a deed must destroy the grantor's free will in executing it.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 190-199; Dec. Dig. § 72.* 13 Va.-W. Va. Enc. Dig. 386; 14 id. 1038.]

3. Deeds (§ 196*)—Undue Influence—Burden of Proof.—The burden of showing such undue influence as will avoid a deed is upon the person asserting it.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 1588; Dec. Dig. § 196.* 13 Va.-W. Va. Enc. Dig. 394; 14 id. 1040.]

4. Deeds (§ 211*)—Undue Influence—Sufficiency of Evidence.—Evidence held not to show undue influence in the execution of a deed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 641; Dec. Dig. § 211.* 13 Va.-W. Va. Enc. Dig. 391.]

5. Deeds (§ 211*)—Mental Capacity—Sufficiency of Evidence.—Evidence held not to show that a grantor was mentally unsound when he executed the deed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 638-640; Dec. Dig. § 211.* 4 Va.-W. Va. Enc. Dig. 380.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.